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Supreme Court, U.S.
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NO. 89-1566

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1989

VIRGINIA M. SEJMAN; A. R. TRAUTWEIN; THOMAS H. GIVENS; THOMAS J. MCHUGH, JR.; GLENDA IDLE; ROY G. COOK; JOSEPH D. DUBUQUE; C. ROBERT REESE; JOSEPH D. NORMAN; MORRIS LEISTER; MARY J. MILLER; RAYMOND G. BERNHARDT; LEWIS LATHREN, on behalf of themselves and all others similarly situated,

Petitioners,

v.

WARNER-LAMBERT COMPANY, INC.,

Respondent.

THOMAS H. GIVENS; M. L. BRANNON; JOHN J. CAPUTO; C. E. ROBINSON, JR.,

Petitioners,

v.

WARNER-LAMBERT COMPANY, INC.,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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A. A conflict exists in the circuits as to the interpretation of severance pay contracts upon the sale of a division as a going concern.

While different facts may well yield different results, substantially the same facts should yield substantially the same result. Petitioners agree that the wording of the contract in Harris v. Pullman Standard, Inc., 809 F.2d 1495 (11th Cir. 1987) is not identical to the wording of the severance pay contract in the present case. A reading of the two contracts reveals, however, that they are substantially the same in their wording.[1] An attorney in the Eleventh Circuit reading either the Warner-Lambert or the Pullman severance contract would expect a court to award severance in accordance with the Harris decision. An attorney in the Fourth Circuit reading the Warner-Lambert or the Pullman severance contract

[1] The severance policy in Harris provides for [f]or all involuntary terminations, other than lay-off, a termination allowance will be granted." Id. at 1479. The Warner-Lambert severance policy provides for severance pay for "an employee terminated by the Company, as a result of job elimination, work performance, or other reason of company convenience." Livernois v. Warner-Lambert, Co., 723 F.2d at 1149.

would expect a court to deny severance in accordance with the decision below. No clearer conflict between the circuits could be shown.

B. The Fourth circuit improperly interpreted the provisions of the Employee Retirement Income Security Act.

Realizing that the Fourth Circuit in Livernois v. Warner-Lambert Co., 723 F.2d 1148 (4th Cir. 1983) provided the petitioners with the benefits which they now seek, the respondent has taken the only course available to it and contends that the interpretation of the contract recognized in the Livernois decision was preempted by ERISA.[2] Respondent's dilemma is unavoidable because it is clear that in the decision below the Fourth Circuit re-interpreted the severance contract and gave the petitioners

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[2] Respondent's argument that the Fourth Circuit in Sejman v. Warner-Lambert Co., 845 F.2d 66 (4th Cir. 1988)(Sejman I) overruled Livernois, while a misinterpretation of the Sejman I decision, is not relevant to the analysis of the decision below. Even if the interpretation of the Sejman I decision by the respondent were correct, the decision below still gives petitioners still have fewer benefits under ERISA than they had before.

fewer rights under the contract than they had before ERISA was applied to this case.

The respondent urges that this Court accept the Fourth Circuit's mistaken view in the case below that ERISA imposes upon employers maximum standards and not minimum. The respondent contends that under ERISA severance pay benefits can never be vested rights. They appear to urge this position even if the contract itself would grant vested severance rights. The respondent says that the decision in the case below was proper because "[t]o have held otherwise would have thwarted Congress' intent of exempting employee welfare benefit plans from vesting requirements and from the attendant administrative burden and expense." Brief in Opposition at 10. Congress never intended for ERISA to prohibit the vesting of benefits. In their positions, both the respondent and the Fourth Circuit in the case below misconceive the proper interpretation of ERISA and have applied the wrong standard of review.

CONCLUSION

This case affords this Court the opportunity to resolve a conflict within the circuits and to make clear that under ERISA, employees have at least the same benefits they had prior to ERISA.